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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,449	07/27/2001	Steve Carignan	10820.30	6996

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EXAMINER

PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 06/24/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/915,449	CARIGNAN ET AL.	
Examiner	Art Unit	
Sue A. Purvis	1734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended these claims to include “means for” language. In particular, Claim 5 states “the controller comprises means for generating an input parameter...” However, it is unclear to the examiner what the “means for generating” is supposed to entail. A control system as set forth in claim 4 typically includes means for generating parameters and thus by meeting the limitations of claim 4, claim 5 is covered as well. Claims 6 through 8 contain similar language. In Claim 6, “means for generating a user set parameter...” seems to be the user interface disclosed in claim 4 with the user setting the parameter. It is not clear to the examiner if additional structure was intended by the applicant’s use of “means for” language in the claim.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 9, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi (US Patent No. 4,843,958).

Egosi discloses an apparatus for applying advertisements to eggs. The device includes a dispensing means (56) for applying advertisements to the egg. Egosi discloses there are several locations in the machine where the dispensing means can be located with respect to the conveyor. For example, Figure 3 shows where the dispensing means (56) is mounted above the conveyor (40). Figures 5, 8, and 11 depict the dispensing means (56) position with respect to the gripper carrier (80), each of these figures represent the dispensing means (56) at different sites along the production line. The dispensing means is mounted beneath the conveyor in each of these embodiments and applies the advertisement to the exposed portion of the egg (E). (Col. 1, lines 9-56; Col. 5, lines 4-10 and 45-64; Col. 6, lines 1-8; Col. 7, lines 45-61.) As shown in Figure 7, the egg (E) can be supported in such a position that the long axis of the egg is disposed substantially horizontal rather than vertical. (Col. 6, lines 44-49.)

Egosi does not disclose where the label applying member is located when the egg (E) is gripped horizontally rather than vertically.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the label applying member in Egosi (56) beneath the egg grippers, because, as shown in Figure 1, the portion of the egg which Egosi desires to label would be the bottom face if the egg were carried horizontally. Egosi discloses that the position of the

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advertising dispensing means is adjustable to ensure that the advertisement is provided on a precise area of the eggs.

Regarding claim 3, Egosi includes a grading means and further includes means for depositing the eggs in their packaging. (Col. 4, lines 1-22.) Egosi includes control means for controlling the movement of the egg handling means to move an egg into a desired position relative to the dispensing means to enable the advertisement to be provided on a precise area of the eggs. Egosi includes a grading machine for deterring the egg's grade and for placing the correct grade in the correct carton. Egosi discloses that means are provided such that only certain eggs have labels applied thereto. In particular, this is done according to the vertical position of the egg in the machine which depends on the eggs weight. (Col. 2, lines 47-56; Col. 5, lines 4-33.)

Regarding claim 9, a sensor (372) is mounted on the table adjacent to the conveyor and senses the presence of eggs under the egg handling means which is identical to the egg handling means shown in FIGS. 12-14. (Col. 12, lines 4-7.)

5. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi as applied to claim 19 above, and further in view of Brooks (US Patent No. 5,660,676).

Egosi does not disclose a computerized labeling control system or a user interface

Figure 6 shows the computer control scheme of the "laid-on" labeler in Brooks. In Brooks, a PLC programmed to recognize the presence of a piece of fruit on a conveyor by receiving an input from a first fiber-optic sensor. The precise position of labels on the label web are also sensed by a second fiber-optic sensor, with this information also being fed to the PLC.

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In response, the PLC times the beginning of and the duration of an electrical pulse to the stepper motor such that a length of label web is fed past the peel blade precisely as the sensed piece of fruit passes beneath the peel blade. Additionally, the PLC can provide a counting function by simply stepping an internal or external counter each time a piece of fruit and/or a label is sensed by the first and second fiber-optic sensors, respectively. The PLC is also provided with additional inputs and outputs for controlling a variety of functions, such as, for example, a low label alarm.

It would have been obvious to one having ordinary skill in the art at the time the invention was made, based on the teachings of Brooks, to include a computerized labeling control system so the labels are properly placed onto the eggs as the eggs pass the labeler.

Regarding claims 5 through 8, the device of Egosi in view of Brook with the controller is capable of generating an input parameter. The PLC in Brooks enables the user to set parameters regarding the destinations and ratio of the eggs.

6. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi as applied to claim 19 above, and further in view of McEvoy et al. (US Patent No. 6,029,424).

Egosi does not disclose an egg surface drying device which uses an air stream generating device.

McEvoy discloses a high-speed egg processing system for conveying, cleaning, drying, oiling, candling, grading, and packing eggs.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a drying step to the device of Egosi, because Egosi teaches sorting

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and packaging eggs but does not mention a cleaning or drying step. McEvoy shows that eggs are typically washed and dried before being packaged, since the labels typically require a dry surface in order to adhere to the item, it is within the purview of the artisan to use a drier to help ensure that the surface of the egg is dry before placing the label thereon.

Regarding claim 11, the examiner is taking official notice that it is well known in the art to use an air drier as a drying device. (See MPEP §2144.03.)

7. Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi as applied to claim 18 above, and further in view of Brooks (US Patent No. 5,660,676).

Egosi teaches using a labeler which blows the label onto the egg surface.

Brooks teaches that a sponge roller or similar device is used at the end of the labeling arm for applying a slight pressure to the label and push it into contact with the item to be labeled.

Brooks discloses various types of labelers which are used for discrete items traveling on a conveyor. In particular two of the common types of labelers are (1) the “blow on” labeler which blows the label onto the item and (2) a “laid-on” labeler in which a peel blade is positioned at the end of an arm. (Col. 1, lines 25-35.) Brooks deals with the labeling of fruit, but a concern with fruit is bruising so the labelers cannot press on the fruit too hard.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a “laid-on” labeler in place of the dispensing means in Egosi, because Brooks teaches that both types of labelers are known and used in the art and as such, it is within the purview of the artisan to use either of these types of labelers. Furthermore, advantages to using a “laid-on” labeler include that the artisan has more control over the labels as they are

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applied, because the label is placed onto the item, rather than “blown” on, which depends on the blowing means to blow the correct amount of air each time so that the label reaches the item.

Another advantage for a “laid-on” labeler is that it is more economical than a “blow-on” labeler as discussed in Brooks.

8. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi in view of Brooks as applied to claim 12 above, and further in view of Bright et al. (US Patent No. 5,858,143).

Egosi in view of Brooks a smoothing device in the form of a roller for helping to ensure the label adheres properly to the item.

Bright discloses that a pressure device such as spring loaded roller (240B), as illustrated at position 4, is used to urge the adhesive covered label onto the surface of the container. Other pressure devices such as a linear wiper arm, a brush, or a stream of directed compressed air may also be used to urge the label to contact the surface of the container. (Col. 16, lines 30-38.)

It would have been obvious to one having ordinary skill in the art at the time the invention was made that a brush or an air jet for directing a stream of compressed air are functionally equivalent alternative expedients of the roller in Brooks, as taught by Bright. Therefore, it is within the purview of the artisan to use a brush or air jet in place of the roller in the device of Egosi in view of Brooks.



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9. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi as applied to claim 19 above, and further in view of Temmink (US Patent No. 5,918,726) and Nanbu (JP 10-101048).

Egosi does not disclose multiple sets of grippers with labeling devices dedicated to each row of grippers.

Temmink discloses an apparatus for transporting eggs. In particular, Temmink shows that multiple egg grippers (5) can be used side by side. (Figure 1.)

Nanbu discloses that in an egg labeling system, the labelers are placed side by side as two rows of labels are advanced past the labelers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made that it is within the purview of the artisan to use multiple rows of grippers as shown in Temmink and when multiple rows are used, the artisan would know to also use multiple labelers, as shown by Nanbu. This ensures that all the eggs transported in each row of grippers are labeled properly.

Regarding claim 17, Nanbu only shows two rows, but it is within the purview of the artisan to use as many labelers as there are rows of eggs to be labeled.

### ***Response to Arguments***

10. Applicant's arguments filed 12 May 2003 have been fully considered but they are not persuasive.

11. Egosi does disclose gripping the egg horizontally as done by the applicant. The majority of the drawings present the embodiment where the egg is gripped vertically, but Figure 7 shows

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the egg when it is gripped horizontally and this embodiment is discussed in Column 6 of the specification. While Egosi does not discuss the label application when the eggs are held horizontally, it is the position of the examiner that it is within the purview of the artisan to label the egg on the unobstructed bottom surface, because that is the only surface that would achieve the desired labeling of Egosi, which is shown in Figure 1.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is 703-305-0507. The examiner can normally be reached on Monday through Thursday 8am to 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1495.



Sue A. Purvis  
Examiner  
Art Unit 1734

sp  
June 17, 2003



CURTIS MAYES  
PRIMARY EXAMINER